

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

UNITED STATES OF AMERICA)	CR No.: 3:08-885-JFA
)	
v.)	ORDER
)	
TRAVIS LEON DAVIDSON)	
_____)	

This matter is before the court upon defendant's motion entitled "Motion to Compel Motion for New Discovery of Evidence" (ECF No. 291). The defendant asks this court to make a ruling on the pending motion. He then contends that he has put evidence in the record that counsel has rendered ineffective assistance of counsel and his constitutional rights have been violated.

The court has reviewed the docket in this case and finds there are no motions pending on this issue. The docket does reveal that on February 1, 2012, the defendant's motion to amend his "Motion to Supplement Motion for Discovery of New Evidence" was granted. However, the defendant has not filed an amended motion for discovery, thus there is no motion pending in this case. The court will allow the defendant 10 days from receipt this order to submit his amended motion for discovery.

The defendant is advised that a district court has no discretion to rule on a motion for relief from judgment that is functionally equivalent to a successive motion under § 2255. *United States v. Winestock*, 340 F.3d 200, 206 (4th Cir. 2003). Failing to treat such motions as successive collateral review applications would allow the applicant to "evade the bar against relitigation of claims presented in a prior application or the bar against litigation

against claims not presented in a prior application.” *Id.*

The record reflects that the defendant’s previous motion under 28 U.S.C. § 2255 was denied by this court on April 13, 2011. That matter was appealed by the defendant on April 25, 2011, and dismissed by the Fourth Circuit Court of Appeals on June 21, 2011.

Should the defendant wish to file a successive petition under 28 U.S.C. § 2255, he must obtain permission from Fourth Circuit. Without prior authorization from the Fourth Circuit, this court is without jurisdiction to hear the claim. *Evans v. Smith*, 220 F.3d 306, 325 (4th Cir. 2002), 28 U.S.C. § 2255(h).

IT IS SO ORDERED.

March 29, 2012
Columbia, South Carolina

A handwritten signature in black ink that reads "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge